

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ROBERT A. COKER AND SHERRI A.)
HUTSON, individually and SHERRI A.)
HUTSON as Executor of the Estates)
of BETTY J. COKER and)
ROBERT L. COKER,)

Plaintiffs,)

v.)

KINDRED HEALTHCARE)
OPERATING, INC., KINDRED)
HEALTHCARE, INC., LAFAYETTE)
HEALTH CARE CENTER,)
INC., and WENDY GOZA, M.D.,)

Defendants.)
_____)

CIVIL ACTION
FILE NO. _____

NOTICE OF REMOVAL

Notice is hereby given by undersigned counsel that Defendants Kindred Healthcare Operating, Inc., Kindred Healthcare, Inc., Lafayette Health Care Center, Inc. (together, the “Kindred Defendants”), with the consent of Defendant Wendy Goza, M.D. (collectively, “Defendants”) hereby remove to this Court, pursuant to 28 U.S.C. §§ 90, 1331, 1332, 1441, 1446, and 1453, the civil action filed in the State Court of Fulton County, Georgia, styled *Robert A. Coker, et al. v.*

Kindred Healthcare Operating, Inc., et al., Civil Action File No. 14-EV-000654J.¹

In support, Defendants show the Court:

1.

Plaintiffs commenced this lawsuit by filing the Complaint in the State Court of Fulton County, Georgia, Civil Action File No. 14-EV-000654J, which is located in the Northern District of Georgia, Atlanta Division. True and correct copies of the process, pleadings, and orders that have been filed in this action are attached hereto as Exhibit A. Defendant Wendy Goza's Consent for Removal is attached hereto as Exhibit B. A true and correct copy of the notice of filing the Kindred Defendants filed in state court is attached as Exhibit C.

2.

Plaintiffs served the Summons and Complaint on Defendant Kindred Healthcare Operating, Inc. by Process Server on April 3, 2014.

3.

Plaintiffs served the Summons and Complaint on Defendant Kindred Healthcare, Inc. on April 3, 2014.

¹ The Defendants reserve, and do not waive, their right to object to service of process, personal jurisdiction, subject matter jurisdiction, and all other available defenses. *See, e.g., Usatorres v. Marina Mercante Nicaraguenses, S.A.*, 768 F.2d 1285, 1287 (11th Cir. 1985) (Fed. R. Civ. P. 12 defenses not waived by removal to Federal Court).

4.

Plaintiffs served the Summons and Complaint on Defendant Lafayette Health Care Center, Inc. on April 8, 2014.

5.

Plaintiffs served the Summons and Complaint on Defendant Wendy Goza, M.D. on March 27, 2014.

6.

Plaintiffs served the First Amended Complaint on Defendant Kindred Healthcare Operating, Inc. by regular mail on April 2, 2014..

7.

Plaintiffs served the First Amended Complaint on Defendant Kindred Healthcare, Inc. on April 2, 2014.

8.

Plaintiffs served the First Amended Complaint on Defendant Lafayette Health Care Center, Inc. on April 8, 2014.

9.

Plaintiffs served the First Amended Complaint on Defendant Wendy Goza, M.D. on March 31, 2014.

10.

Plaintiffs served the Second Amended Complaint on Defendant Kindred Healthcare Operating, Inc. by regular mail on April 15, 2014.

11.

Plaintiffs served the Second Amended Complaint on Defendant Kindred Healthcare, Inc. on April 15, 2014.

12.

Plaintiffs served the Second Amended Complaint on Defendant Lafayette Health Care Center, Inc. on April 17, 2014.

13.

Plaintiffs served the Second Amended Complaint on Defendant Wendy Goza, M.D. on April 10, 2014.

14.

Plaintiffs served the Third Amended Complaint on Defendant Kindred Healthcare Operating, Inc. on October 15, 2014.

15.

Plaintiffs served the Third Amended Complaint on Defendant Kindred Healthcare, Inc. on October 15, 2014.

16.

Plaintiffs served the Third Amended Complaint on Defendant Lafayette Health Care Center, Inc. on October 15, 2014.

17.

Plaintiffs served the Third Amended Complaint on Defendant Wendy Goza, M.D. on October 15, 2014.

18.

Defendants' time to respond to the Third Amended Complaint has not expired. Additionally, this Notice of Removal has been filed within thirty (30) days of the receipt of the amended pleading (the Third Amended Complaint) from which it was first ascertainable that this case is removable.

19.

Defendants have not yet served or filed a response to the Third Amended Complaint.

20.

Plaintiff Robert A. Coker is a resident and citizen of Georgia. Plaintiff Sherri A. Hutson, as an individual Plaintiff, is a resident and citizen of Florida. Plaintiff Sherri A. Hutson, in her capacity as Executor of the Estates of Betty J. Coker and Robert L. Coker, is a resident of Georgia.

21.

Defendant Kindred Healthcare Operating, Inc. is a Delaware corporation with its principal place of business in Kentucky and may be served through its registered agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, in New Castle County.

22.

Defendant Kindred Healthcare, Inc. is a Delaware corporation with its principal place of business in Kentucky and may be served through its registered agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, in New Castle County.

23.

Defendant Lafayette Health Care Center, Inc. is a Georgia corporation with its principal place of business in Georgia, and it may be served through its registered agent, C T Corporation System, 1201 Peachtree Street NE, Atlanta, Georgia, 30361, in Fulton County. Lafayette Health Care Center, Inc. utilizes a trade name known as “Kindred Transitional Care and Rehabilitation – Lafayette”.

24.

Defendant Wendy Goza, M.D., is a resident and citizen of Georgia and consents to this removal.

25.

The residencies, citizenships, and states of incorporation of Plaintiffs and Defendants, listed above, were the same at the time of Plaintiffs' filing of the state court action and each successive amended complaint.

26.

In their Third Amended Complaint, and for the first time in this action, Plaintiffs expressly seek relief under 42 CFR §§ 483.20, 483.25, and 483.35 and assert that "[t]he plaintiffs have an independent right to a cause of action under Federal law for the defendants' failures." (Compl. ¶¶ 96-102.)

27.

During a status conference in the state action, Plaintiffs' counsel represented to both defense counsel and the Honorable Judge Diane E. Bessen—the presiding judge in the state action—that Plaintiffs seek at least \$15,000,000.00 in damages. (*See* Declaration of Justan Bounds, attached hereto as Ex. D.)

28.

Again, in the Third Amended Complaint and for the first time in this action, Plaintiffs seek additional relief on behalf of "the named plaintiffs and other class members." (Compl. ¶ 109.) The Plaintiffs make additional allegations on behalf of class members. (Compl. ¶¶ 105, 108.)

29.

This Court has original federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 because, as stated above, Plaintiffs seek relief expressly under 42 CFR §§ 483.20, 483.25, and 483.35 and assert that “[t]he plaintiffs have an independent right to a cause of action under Federal law for the defendants’ failures.” (Compl. ¶¶ 96-102.)

30.

This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1453 because Plaintiffs ostensibly seek relief on behalf of class members, diversity exists between the named Plaintiffs and at least one Defendant, and Plaintiffs seek relief in excess of \$5,000,000.00.

31.

This Court embraces the county of the State Court from which Defendants are removing the action. Venue is therefore proper under 28 U.S.C. §§ 90(a) and 1446(a).

32.

In accordance with 28 U.S.C. § 1446, Defendants give written notice hereof to Plaintiffs by filing contemporaneously Defendants’ Notice of Filing of Notice of

Removal with the Clerk of the State Court of Fulton County, Georgia, a filed copy of which is attached hereto as Exhibit C.

WHEREFORE, Defendants respectfully request:

- (1) that the above-referenced action, now pending in the State Court of Fulton County, Georgia, be removed to the United States District Court for the Northern District of Georgia, Atlanta Division; and
- (2) that this action be placed on the docket of this Court for further proceedings, in the same manner as if this action had originally been initiated in this Court.

This 14th day of November, 2014.

CARLTON FIELDS JORDEN BURT, P.A.

/s/ Justan C. Bounds

Walter H. Bush

Georgia Bar No. 098825

Christopher B. Freeman

Georgia Bar No. 140867

Justan C. Bounds

Georgia Bar No. 339789

One Atlantic Center

1201 West Peachtree Street

Suite 3000

Atlanta, Georgia 30309

Phone: (404) 815-3400

Fax: (404) 815-3415

Email: wbush@cfjblaw.com

cfreeman@cfjblaw.com

jbounds@cfjblaw.com

*Attorneys for Defendants Kindred Healthcare, Inc. and
Kindred Healthcare Operating, Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
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KINDRED HEALTHCARE)
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CERTIFICATE OF SERVICE

This is to certify that I have this date served the foregoing **NOTICE OF REMOVAL** by depositing a copy of the same in the United States Mail, postage prepaid, addressed as follows:

John W. Mrosek, Esq.
101 Devant Street
Suite 605
Fayetteville, Georgia 30214

Matthew C. Alford, Esq.
Nathan D. Cronin, Sr., Esq.
300 Smith Street
LaGrange, Georgia 30240

This 14th day of November, 2014.

/s/ Justan C. Bounds
Justan C. Bounds

RULE 5.1 CERTIFICATE OF COMPLIANCE

Counsel for Defendants hereby certifies that the foregoing has been prepared with one of the font and point selections approved by the Court in LR 5.1C: Times New Roman (14 point).

**CARLTON FIELDS JORDEN BURT,
P.A.**

/s/ Justan C. Bounds

Walter H. Bush

Georgia Bar No. 098825

Christopher B. Freeman

Georgia Bar No. 140867

Justan C. Bounds

Georgia Bar No. 339789

One Atlantic Center

1201 West Peachtree Street, Suite 3000

Atlanta, Georgia 30309

Phone: (404) 815-3400

Fax: (404) 815-3415

Email: wbush@cfjblaw.com

cfreeman@cfjblaw.com

jbounds@cfjblaw.com

*Attorneys for Defendants Kindred
Healthcare, Inc. and Kindred Healthcare
Operating, Inc.*